IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5329 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHRI MUKUNDBHAI UMEDBHAI MISTRY

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MR SR SHAH for Petitioner

MR MD PANDYA for Respondent No. 2

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/11/2000

ORAL JUDGEMENT

1. Shri Mukundbhai Umedbhai Mistry - Petitioner has filed this petition under Article 226 of the Constitution of India praying that this Court may issue writ of mandamus and/or in the nature of mandamus and any other appropriate writ, direction and order directing the respondent no.1 - Gujarat Electricity Board and

respondent no.2 - The Superintending Engineer of G.E.B. to absorb the petitioner herein as an apprentice to the regular service as Junior Assistant under the peculiar facts and circumstances of the case, and further praying that this Court may direct the respondents to treat the petitioner as an apprentice from 1982 to 1987 and to pay him stipend and get the contract registered so as to enable the petitioner to appear at the ensuing trade test examination by way of interim stage.

2. The facts giving rise to this petition are as under. In this petition, petitioner was employed as apprantise with G.E.B. - i.e. respondent No.1. The Gujarat Electricity Board - respondent No.1 is engaged in generating, maintaining and supplying Electricity through out the State of Gujarat and for that purpose it is engaging and/or employing employees of various categories, one of which is Junior Assistant.

3. In the petition, it was contended that under the provisions of Apprentices Act, 1961 (hereinafter referred to as the said Act for the sake of brevity) more particularly under the provisions of section 8, the Central Government after consulting the Central Administrative council by an order had notified that the Gujarat Electricity Board is designated Trade and therefore, it was required to engage Trade apprentices in certain ratio for each Trade and accordingly by an order dated 14th September, 1981 bearing No.ANC/EST/APP.5/11726 the petitioner was engaged as a full term apprentice in the General Book Keeping Clerk Trade under the provisions of the said Act. The period for training in the trade of General Book Keeping and Accountancy clerk was of one year. It was further contended that the petitioner reported himself for duty as an apprentice. The Board by its order dated 7th October, 1981, directed by the Deputy Engineer (O & M), Gujarat Electricity Board, Borsad who is under the respondent No.2 that he is required to attend training classes at Elecon Engineering Company Limited at Vallabh Vidhyanagar. It was submitted that the petitioner was given an Attendance Card with Roll No.116. According to the said Attendance Card the petitioner fulfilled all the terms and conditions of engagement as an Apprentice and attended all classes and training all throughout the year. It was further submitted that the respondent No.2 by its order dated 25th August, 1982 certified that 21 persons who were in the batch of Apprentice had completed the period of Training for the full term. In the said list of 21 Apprentices, the name of the petitioner is at Sr.No.16. Thereafter, the Deputy Engineer (O & M) Gujarat

Electricity Board, Borsad by his letter dated 26th April, 1983 informed the petitioner that Apprentice Trade Test is to be taken from 28/04/1983 to 04/05/1983 at Test Centre, Industrial Training Institute Talsari road, Baroda-9. Thereafter, the petitioner reported at the said Test Centre on the next day to verify his seat number and other thing. When he visited said Test Centre at the Industrial Training Institute, the petitioner was informed that he will be permitted to appear at the test examination provided he produces the Contract Registration number which is required to be registered with the Apprenticeship Adviser under section 4 of the said Act. The petitioner accordingly went to the office of the respondent No.2 and asked for the contract and the registration number with the Apprenticeship Adviser, so that he can present it before the Test Centre. But unfortunately the respondents did not give either the contract or his Registration number with the Apprenticeship Adviser and consequently he could not appear at the said Trade Test Examination. It was also submitted that on 18th September, 1998, the office of the respondent No.2 could find out the contract and that office wrote a letter to the Deputy Director of Training Centre, Regional Office, Baroda on 19th September, 1986 informing that the petitioner was engaged as an Apprentice clerk and that his period of apprentice was between 15th September, 1981 to 14th September, 1982 and that he has completed the training and, therefore, it was stated that the contract of the petitioner could not be traced from the office and, therefore, it could not be given to the petitioner for appearing at the Trade Test Examination and on search it was found recently and, therefore, the contract was given to the petitioner in September, 1986 and a request was made that the petitioner be permitted to appear at the said trade test examination. In reply to the said letter, the Deputy Director (Training) Regional Office, Baroda Division, Baroda wrote a letter on 25th September, 1986 to the respondent No.2 that the petitioner could not be permitted to appear at the Trade Test Examination now as he was a apprentice for the period between 15th September, 1981 to 14th September, 1982 and the apprentice trainee could appear in the trade test for five trials within the period of three years after the completion of apprentice period and, therefore, the petitioner only because of inadvertence and negligence of the respondents lost his opportunity and right of appearing at the said Trade Test Examination.

4. Thereafter, correspondence ensuance between the parties and ultimately, the present petition has been

filed on 30th September, 1987 for the prayer which has been stated in this behalf.

5. Mr.M. D. Pandya, learned counsel appearing on behalf of the respondent No.1 - Gujarat Electricity Board has relied upon the affidavit of Mr.A. R. Patel, Superintending Engineer on behalf of the Gujarat Electricity Board filed on 15th November, 1987. The learned counsel for the respondent No.1 has also relied upon the provision of the Apprentice Act, 1961, particularly, Section 4 which provides the Contract of apprenticeship. Section 4(1) provides that no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer and Clause-4 of Section 4 of the Apprenticeship Act provides that every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within such period as may be prescribed to the Apprenticeship Adviser for registration. The learned counsel for the respondent No.2 has also relied upon the provisions of Section 20 which provides settlement of disputes - Section 20 of the Apprenticeship Act reads as follows: -

> "Sec. 20 - Any disagreement or dispute between an employer and an apprentice arising out of the contract to apprenticeship shall be referred to the Apprenticeship Adviser for decision.

5:1 Section 22 of the Apprenticeship Act provides for Offer and Acceptance of employment. He has also relied upon the letter dated 14th September, 1981 addressed by Superintending Engineer (O & M), Anand addressed to the petitioner which has been produced at Annexure-A particularly Clause-(9) of the said letter. He has also relied upon the letter produced at Annexure-E at page-38 which addressed to petitioner in the program of the examination informed. He has also relied upon the letter from one K. C. Patel, Additional General Secretary, A.G.V.K.S., Uma Sadan, Station Road, Bhadran to The Superintending Engineer (O & M), G.E.Board, Circle Office, Anand and has also relied upon the affidavit-in-reply filed by the respondent no.3 i.e. one Mr.G. C. Trivedi, Dy. Director (Training) Apprentices Scheme, Employment and Training particularly para-(4) of the said affidavit in which it has been stated that under section 2(q) of the Act, petitioner was engaged as a trade apprentice in the trade of Book-Keeping and Accountancy Department by the Board. The training period

of the petitioner was from 15th September, 1981 to 14th September, 1982 and accordingly a contract for apprenticed training was registered by the State Apprenticeship Advisor, i.e. Director of Employment and Training vide registration No.4597/FR/BKA/439/81 dated 8th August, 1982. He has also relied upon in para-(6) of the said affidavit,wherein it has been stated that however, it is seen from the records that the petitioner never asked information regarding registration of his contract from this office during the period of his training or even after the completion of the training, at least upto the end of April, 1985. Plain reading of section 4 of the Act, nowhere contemplates giving a copy of contract to the apprentice directly by the apprenticeship advisor and, therefore all the allegations relating to the registration of the contract and/or giving the copy to the petitioner subsequently are denied in toto and the petitioner is put to the strict proof of the allegations. He has also relied upon in para-(9) of the said affidavit wherein it has been stated that as per Rule 5(II), even the apprentice who remain absent in test, he is considered to have attempted trial and as such, the petitioner who remained absent right from the first test held in October, 1982 for which he was eligible even without paying examination fees and, thereafter for subsequent five trials by paying a prescribed fee of Rs.5/- per examination till April, 1985 has attained disqualification to appear in subsequent examinations because as per Rule 5(II) apprentice who do not pass the trade test within a period of three years including the first trade test immediately after the completion of training will not be allowed to appear for any subsequent trade test and, therefore, in view of the above, the petitioner was not entitled to have any further chances because of his own conduct as explained above. He has also relied upon affidavit-in-reply filed by Mr.A. R. Patel, Superintending Engineer, Anand wherein it has submitted that the petition deserves to be rejected on the ground of delay and laches, as the petitioner has averred that he was not permitted to appear at the examination in the year-1982, whereas the present petitioner has been filed in the Year-1987.

6. Learned counsel for the respondent therefore contended that the petitioner has prayed in this petition writ of mandamus directing respondent Nos. 1 and 2 to absorb the petitioner herein as an apprentice to the regular service as Junior Assistant under the peculiar facts and circumstances of the case and treat the petitioner as an apprentice from 1982 to 1987 and to pay him stipend and get the contract registered so as to

enable the petitioner to appear at the ensuing trade test examination. He submitted that in view of contention raised earlier, particularly, in the affidavit of the respondent and the provisions of the Apprenticeship Act and condition contemplated under the appointment order and varius correspondences which have been referred to earlier, the petitioner has no legal right and therefore there is no corresponding legal duty on the respondent No.1 to absorb the petitioner as apprentice. In view of the same, the present petition for the prayer of mandamus is not maintainable and cannot lie against respondent Nos. 1 and 2.

7. In my view the petitioner for obtaining relief of writ of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. In my view the petitioner has no legal right to the performance of a legal duty to be performed by respondents in this behalf.

8. In view of the same, the prayer contained in para-11(A) of the petition made by the petitioner before this Court for a direction on the respondents to absorb the petitioner as an apprentice to the regular service cannot be granted in this behalf. The contentions raised in affidavit-in-reply is well founded and, therefore, this petition is required to be rejected and accordingly, it is rejected. Rule is discharged with no order as to costs.

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